

**LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
FRIDAY, MAY 21, 2004**

A. CALL TO ORDER / ROLL CALL

The Special City Council meeting of May 21, 2004, was called to order by Mayor Hansen at 4:38 p.m.

Present: Council Members – Hitchcock, Howard, and Mayor Hansen

Absent: Council Members – Beckman and Land

Also Present: City Manager Flynn, Interim City Attorney Schwabauer, and City Clerk Blackston

B. CLOSED SESSION – NOTE: ***Closed Session was not held.***

- a) Actual Litigation: Government Code §54956.9(a); one case; *People of the State of California; and the City of Lodi, California v. M & P Investments, et al.*; United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM
- b) Actual litigation: Government Code §54956.9(a); one case; *Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al.*, Superior Court, County of San Francisco, Case No. 323658
- c) Conference with legal counsel – initiation of litigation: Government Code §54956.9(c); two cases
- d) Conference with legal counsel – anticipated litigation – significant exposure to litigation pursuant to subdivision (b) of Section 54956.9; one case; pursuant to Government Code §54956.9(b)(3)(A) facts, due to not being known to potential plaintiffs, shall not be disclosed
- e) Actual Litigation: Government Code §54956.9(a); one case; *City of Lodi, a California Municipal Corporation, and Lodi Financing Corporation, a California nonprofit corporation v. Lehman Brothers, Inc. and US Bank National Association*, United States District Court, Eastern District of California, Case No. CIV. S-04-0606 MCE-KJM
- f) Public Employment: Government Code §54957 – to consider the appointment or employment of an independent contractor serving in the capacity of a public officer or employee

C. RETURN TO OPEN SESSION / DISCLOSURE OF ACTION – N/A

D. REGULAR CALENDAR

- D-1 “Approve contract for independent contractor serving in the capacity of a public officer or employee in regard to the Environmental Abatement Program litigation”

Interim City Attorney Schwabauer reported that the contract (filed) before Council for consideration was negotiated by himself and Mayor Hansen with the firm of Folger Levin and Kahn (FLK) to provide services for the City in the groundwater contamination and related litigation. The main terms negotiated were an hourly rate for partners of \$395 an hour, associates at \$235 an hour, and a blended rate of partners and associates at \$325 an hour. The firm will generate two bills every month, one on the basis of the \$395 partner rate and the \$235 associate rate, and one on the basis of a \$325 blended rate between the partners and associates. Whichever bill is lower will be due and payable by the City. The contract includes Section 4 entitled, “Initial Assessment Task,” which stipulates that certain sub-tasks will be completed in 30 days for an amount not to exceed \$150,000. Mr. Schwabauer explained that once the Initial Assessment Task has been completed, FLK will bring forward a six-month budget forecast. In the fourth month of that budget, FLK will submit a budget for the following six months. In the fifth month, the Council will have an opportunity to approve that budget, and it would be ready to go forward in month seven. He noted that the process, as explained, would continue throughout the life of the contract.

The contract indicates that the firm would not be able to bill in excess of the approved budget, unless advance approval was given from the Council. FLK will not bill for travel to San Joaquin County. FLK has agreed to abide by billing guidelines established by the City Attorney's Office in February 2004, which includes that no more than 10 cents a page for copies be charged, there will be no charge for secretarial time, and reasonable travel expense rules are abided by.

At a special closed session meeting held this morning the contract was reviewed by the four Council Members present (Council Member Hitchcock was absent). All four Council Members expressed support of the contract. It is desired to have all five Council Members present to approve the contract in its entirety. Mr. Schwabauer asked Council to consider only section 4 of the contract today.

Council Member Howard confirmed that Council Member Land and Mayor Pro Tempore Beckman reviewed the contract earlier in the day and indicated their support of its approval.

Mayor Hansen recalled the process that took place for the Request for Information process to obtain a legal firm to represent the City in the Environmental Abatement Program litigation. Interviews of six firms were conducted before all five Council Members. Three firms were selected as finalists and thorough background checks were done on each firm. FLK has had success with Wall Street firms and experience in environmental litigation, malpractice, coverage counsel, and locating additional insurance companies. Mayor Hansen believed that the City will now be able to progress in a very aggressive and positive way to clean up the soil and protect the drinking water for the community. He predicted that by the end of 2004 there will be significant actions taking place including characterizing the site and, hopefully, settling and beginning to cleanup the soil. He expressed thanks to Interim City Attorney Schwabauer, and Dan O'Hanlon and Robert Murphy of the firm Kronick Moskowitz Tiedemann and Girard (KMTG) who were instrumental in seeing the City through a difficult period the last five months.

Council Member Howard also expressed her gratitude to these individuals and to Council for working as a team and devoting a significant amount of time and consideration to this process.

In response to Council Member Hitchcock, Mr. Schwabauer reviewed the upcoming litigation schedule and noted that KMTG would be working with FLK on certain matters in the coming weeks.

Council Member Hitchcock stated that she felt very comfortable with the selection of FLK and was pleased that the City would be taking a much more traditional approach via the Comprehensive Environmental Response, Compensation and Liability Act instead of the Municipal Environmental Response and Liability Ordinance.

MOTION #1 / VOTE:

The City Council, on motion of Mayor Hansen, Howard second, adopted Resolution No. 2004-102 approving *Section 4, Initial Assessment Task*, of the agreement to engage outside legal counsel between the City and Folger Levin & Kahn, to be completed in 30 days and appropriating funds not to exceed \$150,000. The motion carried by the following vote:

Ayes: Council Members – Hitchcock, Howard, and Mayor Hansen

Noes: Council Members – None

Absent: Council Members – Beckman and Land

Interim City Attorney Schwabauer noted that the contract also has a conflict waiver that arises out of the fact that FLK would be jointly representing the City and the Lodi Financing Corporation in the Lehman Brothers litigation. He explained that any time two entities are represented in the same litigation there may be circumstances in which the two entities' interests conflict.

MOTION #2 / VOTE:

The City Council, on motion of Mayor Hansen, Howard second, approved the conflict of interest waiver/consent to Folger Levin & Kahn's representation of multiple parties. The motion carried by the following vote:

Ayes: Council Members – Hitchcock, Howard, and Mayor Hansen

Noes: Council Members – None

Absent: Council Members – Beckman and Land

E. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 5:00 p.m.

ATTEST:

Susan J. Blackston
City Clerk